

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7798 of 2023

Petitioner :- Ravindra

Respondent :- Surendra And 22 Others

Counsel for Petitioner :- Rakesh Kumar Srivastava, Arvind Srivastava

Counsel for Respondent :- Nipun Singh

Hon'ble Jayant Banerji, J.

1. Heard Shri Arvind Srivastava, learned counsel for the petitioner and Shri Sumit Suri, Advocate holding brief of Shri Nipun Singh, learned counsel for defendant/respondent No.1.

2. This petition has been filed seeking the following relief;

(i) Set-aside the order dated 03.07.2023 passed by District Judge, Gautam Buddan Nagar in Misc.Civil Appeal No.32/2023 " Surendra Vs. Ravindra and others" (Annexure No. to this petition)."

3. It appears that the petitioner and the plaintiff-respondents filed a suit for permanent injunction. In the suit, the plaintiffs claimed to be recorded co-tenure holders and Bhumidhar with transferable rights. In paragraph no.8 of the plaint, it was stated that the defendant-respondents have forcibly and without any legal or proper family settlement, are threatening to make constructions over an area in excess of their part. It is contended that after considering the objections and the report of the Amin, the trial court by its order dated 31.05.2023 had directed maintenance of status quo. It is stated that a Misc. Civil Appeal No.32 of 2023 (Surendra Vs. Ravindra & others) was filed by the defendant No.1 in the court of District Judge, Gautam Buddh Nagar, which is pending and, in that appeal, on 3.07.2024, the Appellate Court has stayed the operation of the order of the trial court dated 31.05.2023.

4. The contention of the learned counsel for the petitioner is that there is no strict rule that no injunction can be granted against co tenure holder. It is stated that there

may be several instances, which may depend on the facts and circumstances of each case, that may necessitate and render permissible, a grant of injunction.

5. In support of his contention, learned counsel has relied upon a judgment of the Supreme Court in ***T. Lakshmipathi and others Vs. P. Nithyananda Reddy and others***, reported in **2003 (5) SCC 150** and drawn pointed attention of the Court to paragraph no.24 thereof in support of his contention. Learned counsel has also referred to paragraph no.25 of the judgment of the Full Bench of this Court in ***Chhedi Lal and another Vs. Chhotey Lal***, reported in **AIR 1951 (Allahabad)199**.

6. Learned counsel for the respondents has strongly opposed the petition and has relied upon judgments of coordinate Benches of this Court, one judgment is dated 5.01.2023 passed in Matters Under Article 227 No.11228 of 2022, (**Phool Kumar Vs. Shyam Singh and others**) and another judgment in the matter of **Rambhaji Vs. Atma Ram and others** dated 29.03.2019 passed in Matters Under Article 227 No.1428 of 2019.

7. Having perused the record and judgments cited by the learned counsel for the petitioner, this court is not inclined to set aside the order dated 3.07.2023 passed by the appellate court for the reasons that the appeal is still pending. This petition is, however, **disposed of** with a request to the Judge to consider and decide the aforesaid Misc. Civil Appeal No.32 of 2023 without granting any unnecessary adjournment to either of the parties.

Order Date :- 17.10.2023

SFH

(Jayant Banerji, J.)